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EXAMINER

NELSON, FREDA ANN

ART UNIT

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3628

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/916,495	Applicant(s) NAKAMURA, SHUNSUKE	
	Examiner FREDA A. NELSON	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,12,13,16,23,24,27,34,35,38,45,46,49 and 56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5, 12-13, 16, 23-24, 27, 34-35, 38, 45-46, 49, and 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/24/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment received on May 29, 2008 is acknowledged and entered. Claims 3-4, 6-11, 14-15, 17-22, 25-26, 28-33, 36-37, 39-44, 47-48, 50-55 and 57 have been canceled. No claims have been added. Claims 1-2, 5, 12-13, 16, 23-24, 27, 34-35, 38, 45-46, 49, and 56 are currently pending.

Response to Amendment and Arguments

Applicant's arguments filed May 29, 2008 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Downs fails to disclose, teach or suggest "permitting creator registration on the basis of a judgment by an operator of the distribution server when the quality of the stored content item for an examining purpose is higher than a predetermined level", the examiner respectfully disagrees. Downs et al. discloses the Content Quality Control Tool provides a user the ability to implement the Content Quality Control Process 810 as described above, wherein this is an optional Content Processing Tool and provides an opportunity for a quality control technician to review the encoded and watermarked content files and approve or reject

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the content files based on quality judgments. He can re-encode the content making manual preprocessing adjustments until the quality is adequate or can flag the song for reprocessing and attach a note describing the problem (col. 63, lines 8-17).

Furthermore, Applicant argues that the subjective, ***artistic value judgments are made by operators and not machine***, thus meaning that the judgments are influenced by personal opinion of the operator. Therefore, it appears that the method does not have a concrete result that can be substantially repeatable or the process must substantially produce the same result again. In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is “irreproducible” claim should be rejected under section 101).

In response to Applicant’s argument that Downs contains no disclosure at all related to an authoring tool, The Examiner respectfully disagrees. Downs et al. disclose the Secure Digital Content Electronic Distribution Player Application 195 (referred to here as the Player Application 195) is analogous to both a CD, DVD or other Digital Content player and to a CD, DVD, or other digital content storage management system. At its simplest, it performs Content 113, such as playing songs or videos; and ***at another level, it provides the End-User(s) a tool for managing his/her Digital Content Library 196. And just as importantly, it provides for editing and playing of collections of content, such as songs, (referred to here as Play-lists)*** (col. 80, lines 27-36).

In response to Applicant’s argument that in regards to Claim 56 (rejected under 35 U.S.C. §102 as being anticipated by Downs), Sasaki fails to disclose transmitting the

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content item for an examining purpose, the Examiner respectfully disagrees. Firstly, claim 56 is dependent on claim 1, which is rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki et al., in view of Downs. Secondly, the limitation regarding “transmitting of the content item for examining purposes” was addressed in claim 1 as being taught by Down et al.

In response to Applicant’s argument that Lin fails to make up for the deficiencies of Sasaki because Lin fails to disclose permitting registration on the basis of a content quality evaluation or authoring tool of any sort, the Examiner respectfully disagrees. Downs et al. discloses the Content Quality Control Tool provides a user the ability to implement the Content Quality Control Process 810 as described above, wherein this is an optional Content Processing Tool and provides an opportunity for a quality control technician to review the encoded and watermarked content files and approve or reject the content files based on quality judgments. He can re-encode the content making manual preprocessing adjustments until the quality is adequate or can flag the song for reprocessing and attach a note describing the problem (col. 63, lines 8-17). Downs et al. further disclose at another level, it provides the End-User(s) a tool for managing his/her Digital Content Library 196. *And just as importantly, it provides for editing and playing of collections of content, such as songs, (referred to here as Play-lists)* (col. 80, lines 27-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 12-13, 23-24, 34-35, 45-46 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable by Sasaki et al. (JP 2000/163488) in view of Downs et al. (US Patent Number 6,574,609).

As per claims 1, 12, 23, 34, and 45, Sasaki et al. disclose a content distribution system including a creator terminal, a distribution server and a client terminal, and configured such that said creator terminal provides a content item to said distribution server, and said distribution server stores the provided content item and supplies the stored content item to said client terminal in response to a request from said client terminal, wherein said creator terminal comprises charge processing means for charging a fee to a user of said client terminal when the content item stored in said distribution server is supplied to said client terminal (paragraphs [0034]-[0038]); and distribution processing means for distributing a portion of the charged fee back to a registered user of said creator terminal who has provided the content item (paragraph [0039]).

Sasaki et al. do not expressly disclose content item transmitting means for transmitting a content item for an examining purpose to said distribution server;

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authoring tool requesting means for requesting an authoring tool to said distribution server, the authoring tool being used for converting into a predetermined format a content item supplied from said creator terminal to said distribution server; and uploading means for uploading a content item by using the authoring tool provided by said distribution server to upload the converted content item; and wherein said distribution server comprises content item storing means for storing the content item for an examining purpose transmitted from the creator terminal; registration permitting means for permitting creator registration on the basis of a judgment by an operator of the distribution server when the stored content item for an examining purpose is higher than a predetermined level and for transmitting permission for creator registration to said creator terminal; and authoring tool provision means for providing, in response to a request from said creator terminal, an authoring tool to said creator terminal when permission for creator registration is given to said creator terminal.

Downs et al. disclose a registration permitting means for permitting creator registration on the basis of a judgment by an operator of the distribution server when the stored content item for an examining purpose is higher than a predetermined level and for transmitting permission for creator registration to said creator terminal (see FIG 8, [ref 810]). Downs et al. further discloses the preprocessing parameters can be retrieve from the Database 160 of the Content Provider(s) automatically. Referring now to FIG. 13 is a flow diagram of a method to automatically set the Preprocessing and Compression parameters of the Preprocessing and Compression Tool of FIG. 8 according to the present invention. In this embodiment the Content 113 is

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music. In step 1301, music (Content 113) is selected to be encoded in Content Processing Tool 155. The genre of the music selected is determined, step 1302. This can be entered manually or by using other meta data available, such as the additional data retrieved from the process described in FIG. 12. The audio compression level and audio compression algorithms selected are then examined, step 1303. Next, a lookup is made by genre, compression settings and compression algorithms of what compression parameters should be used in the Preprocessing and Compression Process 809, 1304 3. Content Quality Control Tool (col. 62, line 26-col. 63, line 7)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Sasaki et al. to include the features of Downs et al. in order to provide the user the ability to create and/or screen content before storing it in order to maintain a high standard or quality.

As per claims 2, 13, 24-25, 35, and 46, Sasaki et al. disclose a content distribution system, wherein the content item is a piece of music, and said distribution server further comprises copyright processing means for executing processing in relation to copyright of a content item supplied from said creator terminal to said distribution server (paragraphs [0045], [0055]).

As per claim 56, Sasaki et al. disclose a content distribution system according to claim 1, said creator terminal further comprising:

ID number requesting means for requesting the ID number to the distribution server([0013]); and

ID number receiving means for receiving the ID number transmitted from the distribution server and for storing the ID number (see claims 6-8);

wherein said content item transmitting means transmits the content item for an examining purpose together with the ID number to said distribution server , and said distribution server further comprising: ID number allotting means for allotting the ID number to said creator terminal to transmit the ID number in response to the request for the ID number from said creator terminal (see paragraphs [0022]-[0026],[0031]).

2. Claims 5, 16, 27, 38, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki et al. (JP 2000163488), in view of Downs et al. (US Patent Number 6,574,609), still in further view of Lin et al. (Patent Number 6,366,791).

As per claims 5, 16, 27, 38, and 49, Sasaki et al. do not disclose a content distribution system according to claim 1, wherein said client terminal is a phone, and said content item is a piece of music used on the phone.

However, Lin et al. discloses that it should be understood that prior to allowing the mobile subscriber to access the subscriber record 28, the identity of the mobile subscriber is first authenticated. Fees for each musical score 55 can be displayed to the mobile subscriber on the computer 21, and acceptance of these fees provided by the mobile subscriber to the network operator via the web page 45 prior to initiating downloading of the selected musical score(s) 55 (col. 3, lines 60-65); and that the

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downloading of ringing tone patterns 65 to MSs 20 can be implemented within any type of cellular system (col. 4, lines 30-38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Sasaki et al. to include the feature of Lin et al. in order to permit the user to download music to handheld terminals.

Examiner's Note

Examiner cited particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims above the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday, 9:00 am -5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. A. N./

Examiner, Art Unit 3628

/JOHN W HAYES/

Supervisory Patent Examiner, Art Unit 3628